IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

AUSTIN WOLFE	:	CIVIL ACTION
	:	
v.	:	
	:	
STAKE CENTER LOCATING, LLC	:	NO. 23-2125

MEMORANDUM

Bartle, J. July 31, 2023

Before the court is the motion of plaintiff Austin Wolfe to remand this action to the Court of Common Pleas of Philadelphia County pursuant to 28 U.S.C. § 1447(c) for lack of subject matter jurisdiction. Plaintiff also moves for fees and costs (Doc. #12). Defendant has the burden of proving that federal jurisdiction exists. See Dukes v. U.S. Healthcare, Inc., 57 F.3d 350, 359 (3d Cir. 1995).

Plaintiff originally filed this putative class action in the state court on his own behalf and on behalf of all other utility locators working for defendant in or based out of Pennsylvania for the last three years. It was timely removed to this court. Plaintiff alleges violations of the Pennsylvania Minimum Wage Act ("PMWA"), 43 Pa. Stat. Ann. § 333.104, and the Pennsylvania Wage Payment and Collection law ("PWPCL"), 43 Pa. Stat. Ann. §§ 260.1 et seq. The complaint lists a litany of alleged violations concerning failure to pay overtime. Among

other averments, the complaint states that plaintiff and the class "received a taxable automobile allowance as compensation that was not included in his regular rate of pay." It goes on to allege that defendant "represent[ed] to the IRS that the vehicle allowance is wages" and that defendant "failed to include the vehicle allowance in the regular rate calculation for purposes of determining the overtime rate."

Defendant has removed this action under 28 U.S.C. § 1331 which provides that "[t]he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." Defendant argues that the resolution of plaintiffs' state law claims depends on the construction of 29 U.S.C. § 207(e) which defines "regular rate" of pay for employees engaged in interstate commerce and on the application of relevant IRS regulations.

A plaintiff is the master of his or her complaint. The existence of federal question jurisdiction generally depends on whether the plaintiff has asserted a specific claim for relief under the Constitution, laws, or treaties of the United States. This is known as the well-pleaded complaint rule. See Caterpillar Inc. v. Williams, 482 U.S. 386, 392 (1987). No such federal claims appear here on the face of the complaint. The only claims presented are under state statutes, the PMWA and the

PWPCL, against a private employer. The existence of an actual or anticipated federal defense will not suffice to establish federal question jurisdiction. See Valden v. Discovery Bank, 556 U.S. 49, 60 (2009).

Nonetheless, there are narrow circumstances where federal question jurisdiction exists without a federal claim having been specifically asserted. The door of the federal court, for example, is open based on federal question jurisdiction where only a state law claim is pleaded and where "a federal issue is: (1) necessarily raised, (2) actually disputed, (3) substantial, and (4) capable of resolution in federal court without disrupting the federal-state balance approved by Congress." Gunn v. Minton, 568 U.S. 251, 258 (2013). Defendant maintains that the removal of the action on this basis was proper.

The Supreme Court has issued a number of decisions related to this basis for federal question jurisdiction. One of the significant early cases is Smith v. Kansas City Title & Trust Co., 255 U.S. 180 (1921). There, a citizen of Missouri brought suit in the federal court against the defendant, a Missouri corporation, of which he was a shareholder, to prevent it from investing in certain federal government bonds issued pursuant to the Federal Farm Loan Act of 1916. Plaintiff maintained that the corporation had no authority to do so under

state law because the issuance of the bonds was unconstitutional. The Supreme Court held that the federal district court had subject matter jurisdiction because the principal question in the case was the constitutionality of the federal bonds.

Plaintiff specifically relies on a more recent Supreme Court decision, Grable & Sons Metal Products, Inc. v. Darue Engineering & Manufacturing, 545 U.S. 308 (2005). There, the plaintiff brought an action in the state court to quiet title to its property seized by the Internal Revenue Service and sold to a third-party to satisfy its federal tax obligations. Plaintiff alleged that the IRS had given it inadequate notice of the property's sale. The defendant removed the action to the federal court on the ground that title depended on the interpretation of the notice requirements under federal tax law. The Supreme Court held that federal jurisdiction was proper as there was a substantial dispute concerning federal law and removal was "consistent with Congressional judgment about the sound division of labor between state and federal courts governing § 1331's application." Id.

The Supreme Court, shortly thereafter, rejected the applicability of Grable in Empire Healthcare Assurance, Inc. v. McVeigh, 547 U.S. 677 (2006). There a federal employee had health insurance pursuant to the Federal Employee Health Benefit

Act of 1959, 5 U.S.C. §§ 8901 et seq., under a contract between the Blue Cross Blue Shield Association ("BCBSA") and the government. The contract obligated BCBSA to obtain reimbursement of its medical payments on behalf of the employee when a tortfeasor caused injury to the employee and the injury resulted in the payment of benefits for the employee's medical care. Here, benefits had been paid by BCBSA and the estate of the employee later obtained a tort recovery. Learning of this development, BCBSA sued the estate in federal court to recover what it had paid for the employee's medical care.

The estate moved to dismiss on the ground that subject matter jurisdiction was lacking. BCBSA, among other arguments, asserted that federal question jurisdiction existed "because federal law is a necessary element of the [carrier's] claim for relief." Id. at 699 (quotation marks omitted). BCBSA relied on Grable. The Supreme Court found that decision to be inapposite. It held that Grable concerned a pure question of law as to the proper notice requirements under the Internal Revenue Code which would be applicable in future IRS tax sales cases. In contrast, the claim in McVeigh was "fact-bound and situation-specific." Id. at 701. It was merely a common law contract dispute. To the extent any federal law was involved, the state court was competent to deal with it. While the employee who received benefits under the BCBSA contract was part of the federal

workforce, the claim was not sufficient to make it a "federal case." See id. at 701.

Thereafter, in Gunn v. Minton, 568 U.S. 251 (2013), the Supreme Court, as noted above, clarified the four requirements necessary for federal question removal under the present circumstances. That action concerned a client who sued his lawyer in the Texas state court for legal malpractice in the prior handling of the client's patent infringement action in the federal court. The client's patent had been held to be invalid. The Texas Supreme Court reversed a verdict in favor of the lawyer and ordered the action dismissed. It ruled that the action involved a substantial federal question and that the claim was within the exclusive jurisdiction of the federal courts since the federal courts have exclusive jurisdiction over any claims under Acts of Congress related to patents.

The United States Supreme Court reversed the Texas Supreme Court. See id. at 264-65. While it recognized that disputed issues of patent law would need to be decided in this malpractice action, the Court did not consider them to be substantial. Again, the issues were fact specific. Moreover, adjudicating a malpractice case in the state court would not upset the appropriate balance between the role of the state and federal courts even though the federal courts have exclusive jurisdiction over patent cases.

In this pending action, plaintiff makes his claims under two Pennsylvania statutes and nothing more. Defendant maintains that the court will necessarily have to construe 29 U.S.C. § 207 (e) to resolve plaintiffs' state law claims. The Fair Labor Standards Act, 29 U.S.C. § 201 et seq., of which § 207(e) is a part, explicitly provides that states may afford greater protections than the FLSA. See 29 U.S.C. § 218(a). The PMWA has its own definition of regular rate of pay, and it will be this definition which will be central to this lawsuit. See 34 Pa. Code § 231.43. The "regular rate" definition included in § 207(e) is at most a defense or anticipated defense to the state claims asserted. See Minizza v. Stone Container Corp. Corrugated Container Div. E. Plant, 842 F.2d 1456, 1459 (3d Cir. 1988). It does not create a federal question under § 1331. See Valden, 556 U.S. at 60.

Defendants also argue that a federal issue is raised by plaintiffs' reference to IRS regulations in the complaint. To the extent they are relevant, the IRS regulations will be applied to the specific facts in this case, and no legal precedent with wide-spread application and beyond the situation presented will be established. See McVeigh, 547 U.S. at 700-01. Any federal issue will not be substantial so as to support federal question jurisdiction.

The Court turns to the final prong of the four prong test under Gunn. Actions such as this involving the two state statutes in issue are routinely adjudicated in the state courts. Such actions proceed in this court only where diversity of citizenship exists under 28 U.S.C. § 1332 or where there is supplemental jurisdiction under 28 U.S.C. § 1367. Allowing this action to go forward in the federal court based on federal question jurisdiction would "disrupt[] the federal-state balance approved by Congress." Gunn, 568 U.S. at 258.

In sum, this case is more akin to McVeigh and Gunn than to Smith and Grable. Accordingly, the motion of plaintiff to remand this action to the Court of Common Pleas of Philadelphia will be GRANTED for lack of subject matter jurisdiction. No fees and costs will be awarded.